

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 02-29**

WARNING

Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.

SUBJECT

Application of sales and use taxes to safety equipment used in conjunction with dust removal and collection systems used in the woodworking industry.

SCOPE

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the Department by the taxpayer. The rulings herein are binding upon the Department and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the Commissioner at any time.

Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- (E) The taxpayer directly involved must have acted in good faith in relying upon the ruling, and a retroactive revocation of the ruling must inure to the taxpayer's detriment.

FACTS

[THE TAXPAYER] is currently not registered for Tennessee sales and use taxes. The Taxpayer is a Distributor for a spark detection and fire extinguishing system that it sells and installs in Tennessee. This system is designed to prevent fires and explosions due to sparks making their way into pneumatic dust conveying and collection systems utilized

primarily by manufacturers of wood products. The system detects and extinguishes sparks with a water spray to prevent a fire or explosion. The [TYPE] System consists of [COMPONENTS] installed in the ductwork. Water nozzles or sprinklers are strategically placed inside the ductwork to provide an instantaneous wall of water in response to the detection of a spark or ember. Control panels are provided to monitor the activity of the system.¹

QUESTION

Is the [TYPE OF] System exempt from Tennessee sales and use taxes by Tenn. Code Ann. §67-6-346 as pollution control equipment or by Tenn. Code Ann. §67-6-206 as industrial machinery?

RULING

No.

ANALYSIS

Tenn. Code Ann. § 67-6-346

Tenn. Code Ann. §67-6-346 states:

There shall be a credit of one hundred percent (100%) of the sales and use tax paid with respect to pollution control *required to bring the purchaser into compliance with pollution control laws or regulations*, whether federal, state or local. Instead of taking the credit available under this section or § 67-6- 507(i) and (j), *the purchaser may apply* to the commissioner of revenue for a refund of the taxes paid or for authority to make purchases exempt from the tax.

(Emphasis mine).

Tenn. Code Ann. § 67-6- 507(i) and (j) provides further guidance in regard to pollution control equipment utilized by specific industries:

There shall be a credit of one hundred percent (100%) of the sales or use tax with respect to purchases of equipment by automobile body paint shops in order to comply with emission control standards imposed by governmental agencies. *Applicants shall provide proof* as required by the commissioner that the equipment was necessary in order to comply with emission control standards imposed by federal, state or local regulation.

¹ These facts are largely gleaned from the Taxpayer's website [SITE ADDRESS] that provides a wealth of information about the Taxpayer's products, including an animated model that demonstrates how the system works.

(j) There shall be a credit of fifty percent (50%) of the sales or use tax paid with respect to purchases of replacement equipment, as determined by the commissioner, when such equipment is purchased by dry cleaners in order to comply with emission control standards imposed by governmental agencies. *Applicants shall provide proof* as required by the commissioner that the equipment was necessary in order to comply with emission control standards imposed by federal, state or local regulation.

Tenn. Code Ann. § 67-6- 507(i), (j). (Emphasis mine).

Tenn. Code Ann. § 67-6-346 and Tenn. Code Ann. § 67-6- 507(i) and (j) are companion statutes enacted by 1992 Tenn. Pub. Acts 873. However, none of these credit or exemption statutes apply unless the equipment is required to bring the purchaser into compliance with federal, state or local pollution control laws. Read together, these statutes indicate a person claiming the benefit of the credits or exemptions must apply to the Commissioner and present proof that the equipment is required to bring the purchaser into compliance with pollution control laws. Case law also indicates that taxpayers have the burden of demonstrating that they are entitled to a tax exemption. *Tibbals Flooring Co. v. Huddleston*, 891 S.W.2d 196, 198 (Tenn.1994). In this ruling, the Taxpayer is the vendor of the equipment, but the Taxpayer has not shown that the [TYPE OF] System is mandated by any pollution control laws.² Therefore, the exemption provided by Tenn. Code Ann. § 67-6-346 does not apply.

Tenn. Code Ann. §67-6-206

It seems likely the [TYPE OF] Systems may be installed on equipment that will qualify for sales or use tax exemption as industrial machinery. In *Tibbals Flooring Co. v. Huddleston*, 891 S.W.2d 196 (Tenn.1994), the Tennessee Supreme Court determined a spoils removal and dust piping system used in combination with boilers to generate and produce electricity and steam qualified as exempt industrial machinery.³ This spoils removal system was used to transport wood waste to boilers that actually generated and produced the steam and electricity used at the plant. The facts presented by this ruling indicate the [TYPE OF] system will be installed on pneumatic dust conveying and collection systems. Such systems may be similar to the one exempted in *Tibbals*. However, even if this fire prevention equipment is installed on a spoils removal and dust piping system that is exempt as “industrial machinery”, it does not follow that the [TYPE OF] System is also exempt as “industrial machinery”.

“Industrial machinery” that is exempted from tax by Tenn. Code Ann. §67-6-206 is defined by statute. It means in relevant part:

² While the [TYPE OF] System may be mandated by fire prevention laws for some customers, this does not satisfy the requirements of Tenn. Code Ann. § 67-6-346.

³ The Court applied the special definition of “industrial machinery” contained in Tenn. Code Ann. §67-6-102(13)(D)(i) that includes machinery used to generate or produce electricity or steam.

(A) *Machinery, apparatus and equipment* with all associated parts, appurtenances and accessories, including hydraulic fluids, lubricating oils, and greases necessary for operation and maintenance, repair parts and any necessary repair or taxable installation labor therefor, *which is necessary to, and primarily for, the fabrication or processing of tangible personal property for resale* and consumption off the premises, *or pollution control facilities primarily used for air pollution control or water pollution control*, where the use of such machinery, equipment or facilities is by one who engages in such fabrication or processing as one's principal business

As used in this chapter, “pollution control facilities” means any system, method, improvement, structure, device, or appliance appurtenant thereto used or intended for the primary purpose of eliminating, preventing or reducing air or water pollution, ... when such pollutants are created as a result of fabricating or processing by one who engages in fabricating or processing as such person’s principal business activity, which, if released without such treatment, pretreatment, modification or disposal, might be harmful, detrimental or offensive to the public and the public interest;

(D) Such industrial machinery necessary to and primarily for the fabrication and processing of tangible personal property for resale or used primarily for the control of air pollution or water pollution includes, but is not limited to:

Machines used for generating, producing, and distributing utility services, electricity, steam, and treated or untreated water;

(F) Such industrial machinery necessary to and primarily for the fabrication or processing of tangible personal property for resale and consumption off the premises or used primarily for the control of air pollution or water pollution does not include machinery, apparatus and equipment used prior to or after equipment exempted by subdivision (13)(D)(ii), and does not include equipment used for maintenance or the convenience or comfort of workers;

Tenn. Code Ann. § 67-6-102(13) (Emphasis mine).

The [TYPE OF] System is not “necessary to and primarily for the fabrication or processing of tangible personal property for resale” so as to come within the most common and basic definition of “industrial machinery” found in Tenn. Code Ann. § 67-6-102(13)(A). It is also not “used or intended for the primary purpose of eliminating,

preventing or reducing air or water pollution” as required by Tenn. Code Ann. § 67-6-102(13)(A)(iv) for “pollution control facilities.” Furthermore, it is not used to generate, produce, or distribute utility services, electricity, steam, and treated or untreated water so as to meet the requirements of the special definition of “industrial machinery” contained in Tenn. Code Ann. § 67-6-102(13)(D)(i) as applied by the Court in the *Tibbals* case. Instead, the [TYPE OF] System is used to protect property and persons from the hazards of fire or explosion. While it is important for manufacturers to protect people and machinery from the hazards of fire or explosions, machinery or equipment used for this purpose is not currently recognized as exempt “industrial machinery” by the statute.⁴

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APPROVED: Ruth E. Johnson
Commissioner of Revenue

DATE: 8-21-02

⁴ Not all machinery or equipment that is used by a manufacturer will be exempted as industrial machinery. Notably, machinery used for maintenance or the convenience or comfort of workers is specifically excluded by the statute. Tenn Code Ann. § 67-6-102(13)(F).